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February 8, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated December 15, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are in the process of updating our records on your state's sales and use taxes levied on motor vehicles and other tangible personal property for reciprocity purposes. We are submitting the following information which may be helpful in responding to the enclosed questionnaire.

The STATE Retailers' and Consumers' Sales and Use Tax Act, as amended, levies a use tax at the rate of 4% of the cost price or fair market value, whichever is the lesser, of tangible personal property purchases at retail outside this State, upon its first use, consumption or storage within this State.

Credit against the STATE use tax, not to exceed the tax imposed by our law, is granted for a sales or use tax legally imposed and paid in any state which grants credit for a like tax paid in STATE. However, no credit can be given unless that state grants credit for such taxes paid in STATE. STATE sales and use tax is not charged a non-resident purchaser who executes an affidavit, our Form ST-8, that the purchaser is a non-resident and intends to immediately remove the vehicle to their home state for registration.

In an effort to update our records regarding your state's sales tax, we request that you complete the enclosed questionnaire and return to this office no later than January 15, 1999. If you have any questions regarding this matter, please do not hesitate to contact me at ####.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax on Illinois retailers at the rate of 6.25% of the gross receipts from sales for use or consumption. 35 ILCS 120/1 et seq. (1996 State Bar Edition). The

Use Tax Act imposes a tax on purchasers by taxing the use of tangible personal property purchased from retailers. 35 ILCS 105/1 et seq. (1996 State Bar Edition).

Section 10 of the Use Tax Act, 35 ILCS 105/10 (1996 State Bar Edition), provides that a purchaser of a motor vehicle from an out-of-State retailer shall file a return (Form RUT-25, Motor Vehicle Use Tax Return) with the Department and remit the proper amount of tax due on the selling price of the motor vehicle within 30 days after such motor vehicle is brought into this State for use.

Illinois will give a credit for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310, enclosed. Depreciation is also allowed for out-of-State use. See 86 Ill. Adm. Code 150.105, enclosed. In addition, the Use Tax does not apply to the use, in this State, of tangible personal property which is acquired outside this State by a nonresident individual who then brings the property to this State for use here, and who shall have used the property outside this State for at least 3 months before bringing the property to this State. See the enclosed copy of 86 Ill. Adm. Code 150.315. This exemption is not applicable if the 3-month requirement is not met, or if the purchase is not made by a nonresident individual.

If sellers make delivery of motor vehicles from a point in this State to a point outside this State, not to be returned to this State the interstate commerce exemption would apply. If delivery of the automobile is taken in Illinois, tax will be due. The Interstate Commerce Exemption cannot be claimed if the motor vehicles return to the State of Illinois.

Please see Section 130.605 (a)(4)(A) which explains that in some circumstances (driveaway decal and plate swap), an automobile can be delivered to a purchaser in Illinois without triggering any Illinois tax liability.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 270.115 which is the regulation regarding Jurisdictional Questions related to the Home Rule Municipal Retailers' Occupation Tax. As you will note, it is the Department's opinion that the sellers' acceptance of the purchase orders or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If purchase orders are accepted at the sellers' place of business within the municipality, the sale is at retail, and the purchasers receive physical possession of the property in Illinois, the sellers incur Home Rule Municipal Retailers' Occupation Tax liability in that home rule municipality.

If purchase orders are accepted outside this State, but the tangible personal property which is sold is in an inventory of the retailers located within a Home Rule municipality at the time of its sale, or is subsequently produced in the Home Rule municipality, then delivered to the purchasers in Illinois, the place where the property was located at the time of the sale, or at the time it was subsequently produced, will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes regarding that sale.

When the purchase orders are not accepted in Illinois, nor is the property located in Illinois at the time of the sale or when it is subsequently produced, the transactions will not be subject to Home Rule tax. The transactions will,

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however, be subject to Illinois Use Tax, which sellers having a physical presence in this State must collect and remit.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.